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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,983	12/27/2001	Joseph Michael Lewis	71042	1103

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CARGILL, INCORPORATED
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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/034,983	Applicant(s) LEWIS ET AL.	
	Examiner James Keenan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 9-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3652

1. Claims 9-44 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al (US 5,046,912).

Bostrom et al show a method of supplying bulk material, including loading the material into a rail container, transporting the container, and inverting the container to remove the material therefrom. Bostrom et al discloses that the material may be grain, and that the container may be a rail car with a cover that can be removed or opened prior to unloading. Bostrom et al do not explicitly state that the material is moist grain by-products.

Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Bostrom et al's process to include moist grain by-products, as this is simply a particular type of grain, and therefore a mere design expediency, especially since no specific structure germane to handling moist grain by-products is set forth.

Re claim 45, Bostrom shows in figure 5 that the car is rotated through about 160 degrees, as noted in column 20, lines 28-39.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Wymer et al (US 4,823,708, cited by applicant).

Wymer et al show that it is well known to utilize a flexible cover or tarp to cover an open-topped railcar containing grain, and in light of this, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Bostrom et al by including this feature, as it would simply be an art recognized design expediency which would neither require undue experimentation nor produce unexpected results.

5. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Auld et al (US 1,496,196).

Bostrom et al show a below-grade pit 25 for receiving the dumped material, but do not disclose a material moving device for further transport of the material.

Auld et al show a method of transporting bulk materials including a railcar inverting device D which dumps the material to a below-grade conveyor 5 for subsequent transfer to loading terminal 30 where it is loaded onto a transportation vehicle for further distribution.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Bostrom et al by utilizing a conveyor in the pit

for moving the material to a transportation vehicle for further distribution, as shown by Auld et al, as this would enhance the usefulness and flexibility of the system.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Auld et al, as applied to claim 6 above, and further in view of Wymer et al and Lydic (US 6,244,191).

As noted above re claim 3, Bostrom et al does not show a flexible tarp, and it would have been an obvious design expediency to have included this feature in view of Wymer et al. Bostrom et al, even as so modified, also does not show the railcar to be made of aluminum.

Lydic shows a railroad hopper car for grain and other bulk materials the body of which is made of aluminum.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the process of Bostrom et al by providing at least the body of the railcar with aluminum, as shown by Lydic, as this would provide well known advantages such as corrosion resistance and lighter weight.

7. Applicant's arguments filed 5/14/04 have been fully considered but they are not persuasive. Applicant argues that Bostrom fails to show inverting the rail car, asserting that the reference teaches rotating the car only as much as 70-110 degrees, whereas applicant's invention rotates the car 120 to 180 degrees. First of all, this range specified by applicant is only an example and therefore the term "inverted" is not considered to be

limited only to this range. More important, however, is the simple fact that Bostrom does teach rotating the car within this range, as pointed out above. The 70-110 degree range in Bostrom refers to a different aspect of the invention. Applicant also notes that Bostrom fails to teach moist grain by-products. However, the examiner has given a reason why it would have been obvious to modify Bostrom with moist grain by-products, to which applicant has set forth no arguments or rebuttal.


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Keenan
Primary Examiner
Art Unit 3652

jwk
8/23/04